

tor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.”

Subsec. (c). Pub. L. 103-355, §2351(b), substituted “\$100,000” for “\$50,000” wherever appearing.

Subsec. (c)(4). Pub. L. 103-355, §2351(e), substituted “tribunal concerned” for “agency board of contract appeals” and “tribunal concerned,” for “board.”

Subsec. (e). Pub. L. 103-355, §2352, substituted “October 1, 1999” for “October 1, 1995” and inserted after first sentence “In any case in which the contracting officer rejects a contractor’s request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor’s specific reasons for rejecting the request.”

1992—Subsec. (c)(1). Pub. L. 102-572, §907(a)(1)(A), struck out “and” after “belief,” and inserted before period at end “, and that the certifier is duly authorized to certify the claim on behalf of the contractor”.

Subsec. (c)(6), (7). Pub. L. 102-572, §907(a)(1)(B), added pars. (6) and (7).

1990—Subsecs. (d), (e). Pub. L. 101-552 added subsecs. (d) and (e).

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 907(a)(2) of Pub. L. 102-572 provided that: “The amendment made by paragraph (1)(B) [amending this section] shall be effective with respect to all claims filed before, on, or after the date of the enactment of this Act [Oct. 29, 1992], except for those claims which, before such date of enactment, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Claims Court.”

Section 907(a)(4) of Pub. L. 102-572 provided that: “The amendments made by paragraph (1)(A) [amending this section] shall be effective with respect to certifications executed more than 60 days after the effective date of amendments to the Federal Acquisition Regulation implementing the amendments made by paragraph (1)(A) with respect to the certification of claims.” [For effective date of implementing regulations, see 59 F.R. 11368, Mar. 10, 1994.]

#### TERMINATION DATE OF 1990 AMENDMENT; SAVINGS PROVISION

For termination Oct. 1, 1995, of authority of agencies to use dispute resolution proceedings, with exceptions, under amendments by Pub. L. 101-552, see section 11 of Pub. L. 101-552, set out as a Termination Date; Savings Provision note under section 571 of Title 5, Government Organization and Employees.

#### EFFECT OF CONTRACT PROVISIONS PROVIDING FOR SUBMISSION OF CLAIMS EARLIER THAN SIX YEARS AFTER ACCRUAL

Section 2351(a)(2) of Pub. L. 103-355 provided that: “Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978 [41 U.S.C. 605(a)], as added by paragraph (1), if a contract in existence on the date of the enactment of this Act [Oct. 13, 1994] requires that a claim referred to in that sentence be submitted earlier than 6 years after the accrual of the claim, then the claim shall be submitted within the period required

by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 606, 609, 611 of this title; title 5 section 504; title 10 sections 2324, 2405; title 28 section 1491; title 31 section 3907.

### § 606. Contractor’s right of appeal to board of contract appeals

Within ninety days from the date of receipt of a contracting officer’s decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

(Pub. L. 95-563, §7, Nov. 1, 1978, 92 Stat. 2385.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 256 of this title; title 10 section 2324.

### § 607. Agency boards of contracts appeals

#### (a) Establishment; consultation; Tennessee Valley Authority

(1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

#### (b) Appointment of members; chairman; compensation

(1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that such members shall have had not fewer than five years’ experience in public contract law. Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. Compensation for the chairman, the vice chairman, and all other members of an agency board shall be determined under section 5372a of title 5.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2) of this section, and shall designate a chairman of such board. The chairman and all other members of such board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the board.

**(c) Appeals; inter-agency arrangements**

If the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

**(d) Jurisdiction**

Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.

**(e) Decisions**

An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

**(f) Accelerated appeal disposition**

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$100,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

**(g) Review**

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to

the provisions of section 1337 of title 28, within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of the decision in any case.

(3) An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 through 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

**(h) Procedural guidelines**

Pursuant to the authority conferred under the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], the Administrator is authorized and directed, as may be necessary or desirable to carry out the provisions of this chapter, to issue guidelines with respect to criteria for the establishment, functions, and procedures of the agency boards (except for a board established by the Tennessee Valley Authority).

(Pub. L. 95-563, § 8, Nov. 1, 1978, 92 Stat. 2385; Pub. L. 97-164, title I, §§ 156, 160(a)(15), Apr. 2, 1982, 96 Stat. 47, 48; Pub. L. 101-509, title V, § 529 [title I, § 104(d)(4)], Nov. 5, 1990, 104 Stat. 1427, 1447; Pub. L. 101-552, § 6(b), Nov. 15, 1990, 104 Stat. 2746; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-355, title II, § 2351(c), Oct. 13, 1994, 108 Stat. 3322.)

## REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (b)(1), see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of this title.

The Office of Federal Procurement Policy Act, referred to in subsec. (h), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

## CODIFICATION

In subsec. (b)(1), “administrative law judges” substituted for “hearing examiners” on authority of section 3 of Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 184, which is set out as a note under section 3105 of Title 5, Government Organization and Employees.

Subsec. (i), which required all agency boards of three or more full time members, except that of the Tennessee Valley Authority, within one hundred and twenty days after Nov. 1, 1978, to develop workload studies for approval by the agency head specified in subsec. (a)(1), was omitted.

## AMENDMENTS

1994—Subsec. (f). Pub. L. 103-355 substituted “\$100,000” for “\$50,000”.

1992—Subsec. (d). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1990—Subsec. (b)(1). Pub. L. 101-509, § 529 [title I, § 104(d)(4)(A)], substituted “Compensation for the chairman, the vice chairman, and all other members of an agency board shall be determined under section 5372a of title 5.” for “The chairman of each agency board shall receive compensation at a rate equal to that paid a GS-18 under the General Schedule contained in section 5332, of title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS-17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS-16

under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS-16, GS-17, and GS-18 of such General Schedule under existing law.”

Subsec. (b)(2). Pub. L. 101-509, §529 [title I, §104(d)(4)(B)], substituted “The chairman and all other members of such board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the board.” for “The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS-18 under the General Schedule contained in section 5332, of title 5, for each day he is engaged in the actual performance of his duties as a member of such board. All other members of such board shall receive compensation at a rate equal to the daily rate paid a GS-16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.”

Subsec. (g)(3). Pub. L. 101-552 added par. (3).

1982—Subsec. (d). Pub. L. 97-164, §160(a)(15), substituted “United States Claims Court” for “Court of Claims”.

Subsec. (g)(1)(A). Pub. L. 97-164, §156(1), substituted “United States Court of Appeals for the Federal Circuit” for “Court of Claims”.

Subsec. (g)(1)(B). Pub. L. 97-164, §156(2), substituted “Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28” for “United States Court of Claims for judicial review, under section 2510 of title 28”.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE AND TERMINATION DATES OF 1990 AMENDMENTS

For termination Oct. 1, 1995, of authority of agencies to use dispute resolution proceedings, with exceptions, under amendments by Pub. L. 101-552, see section 11 of Pub. L. 101-552, set out as a Termination Date; Savings Provision note under section 571 of Title 5, Government Organization and Employees.

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of Title 5.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 606, 609 of this title; title 5 sections 504, 5102, 5372a; title 25 section 450m-1; title 28 sections 1295, 1346.

## § 608. Small claims

### (a) Accelerated disposition of appeals

The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$50,000 or less. The small claims procedure shall be applicable at the sole election of the contractor.

### (b) Simplified rules of procedure

The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

### (c) Time of decision

Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

### (d) Finality of decision

A decision against the Government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

### (e) Effect of decision

Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this chapter.

### (f) Review of requisite amount in controversy

The Administrator is authorized to review at least every three years, beginning with the third year after November 1, 1978, the dollar amount defined in subsection (a) of this section as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly.

(Pub. L. 95-563, §9, Nov. 1, 1978, 92 Stat. 2387; Pub. L. 103-355, title II, §2351(d), Oct. 13, 1994, 108 Stat. 3322.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-355 substituted “\$50,000” for “\$10,000”.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 759.

## § 609. Judicial review of board decisions

### (a) Actions in United States Court of Federal Claims; district court actions; time for filing

(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.